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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,480	03/06/2000	BRIGITTE GICQUEL	0660-0165-0X	5139
22850	7590	05/19/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

### Application No.

09/462,480

### Applicant(s)

GICQUEL ET AL.

### Examiner

Rodney P. Swartz, Ph.D.

### Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23December2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 56-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 051104.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Applicants' Response to Final Office Action, received 23December2003, is acknowledged. Claims 56, 58, and 59 have been amended.
2. Claims 56-71 are pending and under consideration.

### **Rejections Withdrawn**

3. The rejection of claims 56-70 under 35 U.S.C. 112, second paragraph, indefiniteness, is withdrawn in light of the amendment of the claims.
4. The rejection of claims 58 and 59 under 35 U.S.C. 112, first paragraph, scope of enablement for epitope units, is withdrawn in light of the amendment of the claims.

### **Specification**

5. The disclosure is objected to because of the following:

Page 31, line 10, lists the sequence of SEQ ID NO:10 as a portion of SEQ ID NO:5, but position 16 of SEQ ID NO:10 differs from the parent SEQ ID NO:5. In addition, the paper copy and the CRF of the listed sequences also have this discrepancy.

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 61-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

One embodiment of claim 61 is drawn to an antigenic portion of polypeptide SEQ ID NO:5 which is polypeptide SEQ ID NO:10. However, unlike all of the other portions of SEQ ID NO:5 listed, SEQ ID NO:10 is not an exact portion of SEQ ID NO:5.

SEQ ID NO:10 is a 16-mer sequence whose first 15 residues are identical to residues 37-51 of SEQ ID NO:5. However, residue 16 of SEQ ID NO:10 is Ala, which is different from the Gln of residue 52 in SEQ ID NO:5. Therefore, SEQ ID NO:10 comprises a portion of SEQ ID NO:5, but is not an actual portion of SEQ ID NO:5.

This discrepancy raises the question of which sequence is correct, SEQ ID NO:5 or SEQ ID NO:6. If sequence SEQ ID NO:10 is a typographical error, a full explanation, with supportive documentation if possible, of when/how the error occurred should be provided. If SEQ ID NO:5 is in error, then the status of all claims, specification, sequence listing and CRF which are drawn to SEQ ID NO:5 will also be error.

9. Claims 56-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 56-60 are drawn to polypeptide which is listed as SEQ ID NO:5. Due to the discrepancy between SEQ ID NO:5 and SEQ ID NO:10, discussed *supra*, it is unclear at this time whether the sequence designated as SEQ ID NO:5 is correct or in error. Therefore, the current rejection is put forth until clarification of this issue is resolved.

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### Conclusion

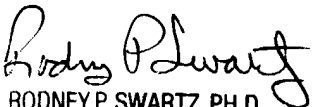
10. No claims are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RODNEY P. SWARTZ, PH.D.  
PRIMARY EXAMINER  
Art Unit 1645

May 11, 2004